

1 AN ORDINANCE approving Contract 92-  
2 04 FOR RESTORATION OF WATER  
3 MAINTENANCE UTILITY CUTS between  
4 MERGY CONSTRUCTION, INC. and the  
City of Fort Wayne, Indiana, in  
connection with the Board of Public  
Works.

5 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
6 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

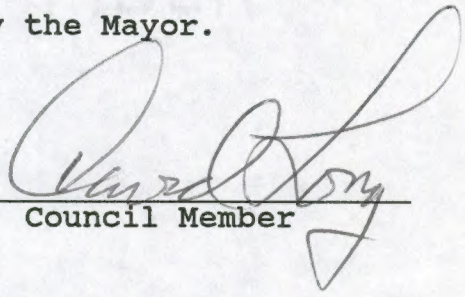
7 SECTION 1. That the Contract 92-04,  
8 RESTORATION OF WATER MAINTENANCE UTILITY CUTS by and  
9 between MERGY CONSTRUCTION, INC. and the City of Fort  
10 Wayne, Indiana, in connection with the Board of Public  
11 Works, is hereby ratified, and affirmed and approved in  
12 all respects, respectfully for:

13 for restoration of Water Maintenance Utility  
14 Cuts;

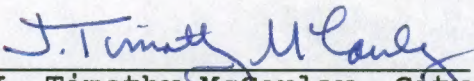
15 involving a total cost of Sixty-Eight Thousand Four  
16 Hundred Forty and no/100 Dollars (\$68,440.00).

17 SECTION 2. Prior Approval has been requested  
18 from Common Council on MAY 26, 1992. Two copies of said  
19 Contract are on file with the Office of the City Clerk  
20 and made available for public inspection, according to  
21 law.

22 SECTION 3. That this Ordinance shall be in  
23 full force and effect from and after its passage and any  
24 and all necessary approval by the Mayor.

25  
26  
27   
Council Member

28  
29 APPROVED AS TO FORM  
30 AND LEGALITY

31   
32 J. Timothy McCaulay, City Attorney



# CONSTRUCTION CONTRACT

Board Order 58-92

Contract 92-04

Work Order 64321

THIS CONTRACT made and entered into in triplicate this 10 day of June, 1992, by and between MERGY CONSTRUCTION, INC., herein called CONTRACTOR, and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, acting by and through the MAYOR and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

## ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

### **RESTORATION OF WATER MAINTENANCE UTILITY CUTS**

all according to FORT WAYNE WATER UTILITY SPECIFICATIONS, and do everything required by this contract and the other documents constituting a part hereof.

## ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of SIXTY-EIGHT THOUSAND FOUR HUNDRED FORTY AND NO/100 DOLLARS (\$68,440.00). In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR'S Proposal.

## ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten percent (10%) of the total amount owing to insure contractor's compliance with the E.B.E. Rider attached to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. rider, is fully performed. Payments to the **CONTRACTOR** are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection, and will direct the **CONTRACT COMPLIANCE DEPARTMENT** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR's** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the **Board of Public Works** through an E.B.E. Compliance Final Report.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and the contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard **Board of Public Works** escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any

Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

#### **ARTICLE 7: PREVAILING WAGE SCALE**

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

#### **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids for Contract/Resolution
- b. Instructions to Bidders for Contract/Resolution
- c. Contractor's Proposal dated
- d. Fort Wayne Engineering Department Drawing Number
- e. Supplemental Specifications for Contract/Resolution
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, General Ordinance Number G-34-78 (as amended)
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond
- k. Right-of-Way Cut Permit
- l. Comprehensive Liability Insurance Coverage
- m. Form 96
- n. E.B.E. Rider

#### **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and

Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the OWNER.

#### **ARTICLE 10: INDEMNITY**

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

#### **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties. Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

#### **ARTICLE 12: COMPLETION DATE**

The CONTRACTOR agrees to complete the work specified in the contract within 60 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

#### **ARTICLE 13: COUNCILMANIC APPROVAL**

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

#### **ARTICLE 14:**

This contract is governed by Laws of the State of Indiana.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**MERGY CONSTRUCTION, INC.**

**BY:**

**BONI MERGY, PRÉSIDENT**

CITY OF FORT WAYNE

**BY:**

**PAUL HELMKE, MAYOR**

**BY:**

**CHARLES E. LAYTON, DIRECTOR, BOARD  
OF PUBLIC WORKS**

**BY:**

**C. JAMES OWEN, MEMBER  
BOARD OF PUBLIC WORKS**

**BY:**

**KATHERINE A. CARRIER, MEMBER**

**ATTEST:**

**PATRICIA J. CRICK, CLERK**

**APPROVED AS TO FORM AND LEGALITY BY:**

**ASSOCIATE CITY ATTORNEY**

**THIS DOCUMENT PREPARED BY: TERRY L. ATHERTON, P.E., L.S., DIRECTOR OF  
WATER RESOURCES, ENGINEERING AND SERVICES.**

**E.B.E. RIDER**

**THIS AGREEMENT** made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **MERGY CONSTRUCTION, INC.**, hereinafter referred to as **CONTRACTOR**,

**WITNESSETH:**

**WHEREAS**, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **RESTORATION OF WATER MAINTENANCE UTILITY CUTS**, which project was bid as **CONTRACT NUMBER 92-04, BOARD ORDER NUMBER 58-92**; and

**WHEREAS**, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s** as subcontractors on this project is **10%** of the contract amount; and

**WHEREAS**, **OWNER** has, pursuant to Executive Order 90-01 (as amended 12-19-91), adopted a goal of at least **10%** of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 12-19-91); and

**WHEREAS**, said Executive Order (as amended 12-19-91) states:

**"Section 2, Paragraph C.** Each contractor shall be required to make a good faith effort to subcontract **10%** of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract **10%** of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. **Conditional Award** - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, **OWNER** awards the construction contract to the **CONTRACTOR**.
2. **E.B.E. Retainage requirements** - If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract ten percent (10%) of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten percent (10%) E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the ten percent (10%) E.B.E. goal.
4. Determination of Waiver Requests - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. Good Faith Per Se. - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. Consequence of noncompliance - In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between ten percent (10%) and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. Waiver approved - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.



IN WITNESS WHEREOF, the parties have executed the E.B.E. Rider this 10 day of June, 1992.

MERGY CONSTRUCTION, INC.

BY:

Boni Mergy  
BONI MERGY, PRESIDENT

BY:

Charles E. Layton  
CHARLES E. LAYTON, DIRECTOR, BOARD  
OF PUBLIC WORKS

BY:

C. James Owen  
C. JAMES OWEN, MEMBER  
BOARD OF PUBLIC WORKS

BY:

Katherine A. Carrier  
KATHERINE A. CARRIER, MEMBER

ATTEST:

Patricia J. Crick  
PATRICIA J. CRICK, CLERK

Read the first time in full and on motion by Long,  
and duly adopted, read the second time by title and referred to the  
Committee on City of Public (and the City Plan Commission  
for recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Conference Room 128, City-County Building, Fort  
Wayne,, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock  
\_\_\_\_\_, M., E.S.T.

DATED: 6-23-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long,  
and duly adopted, placed on its passage. PASSED 10:58  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 7-14-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL)  
(SPECIAL) \_\_\_\_\_ (ZONING) \_\_\_\_\_ ORDINANCE \_\_\_\_\_ RESOLUTION NO. S-113-92  
on the 14th day of July, 1992

ATTEST: (SEAL)  
Sandra E. Kennedy Thomas E. Henry  
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 15th day of July, 1992,  
at the hour of 11:00 o'clock PM, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of July,  
1992, at the hour of 1:30 o'clock P M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Construction Contract 92-04

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Construction Contract 92-04 is for Restoration of Water Maintenance Utility Cuts. Mergy Construction, Inc., is the contractor. **PRIOR APPROVAL WAS RECEIVED ON 5/26/92.**

EFFECT OF PASSAGE: Restoration of Water Maintenance Utility Cuts.

EFFECT OF NON PASSAGE:

*S-92-06-16*

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$68,440.00

ASSIGNED TO COMMITTEE:

BILL NO. S-92-06-16

REPORT OF THE COMMITTEE ON  
CITY UTILITIES

DAVID C. LONG, CHAIR  
SAMUEL J. TALRAICO, VICE CHAIR  
LUNSEY, BRADBURY

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract  
92-04 FOR RESTORATION OF WATER MAINTENANCE UTILITY CUTS between  
MERGY CONSTRUCTION, INC. and the City of Fort Wayne, Indiana,  
in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*David C. Long*  
*Samuel J. Talraico*  
*Christie Lunsey*

DATED: 7-14-92.

Sandra E. Kennedy  
City Clerk